

United States Court of Appeals
Fifth Circuit

F I L E D

February 9, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-40778
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

EDDIE SANFORD SPYKES,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 4:01-CR-44-3

Before SMITH, DUHÉ, and WIENER, Circuit Judges.

PER CURIAM:¹

Eddie Sanford Spykes (Spykes) appeals the sentence imposed after his plea of guilty to one count of conspiring to manufacture methamphetamine between 1988 and 2001. He contends that the district court erred by applying the 1998 edition of the Sentencing Guidelines to relevant conduct that occurred in 1988. He did not object to the edition of the guidelines used in the district court, so we review only for plain error. See United States v. Krout, 66 F.3d 1420, 1434 (5th Cir. 1995).

¹ Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

The record refutes Spykes's contention that the district court applied U.S.S.G. § 2D1.11, a guideline that did not take effect until 1991. Spykes benefitted when the district court declined to apply the 2002 edition of guidelines due to ex post facto concerns about a provision that would have raised Spykes's offense level. See U.S.S.G. § 1B1.11(b)(1). The district court's application of guidelines that were in effect during the conspiracy was not a clear or obvious error that affected Spykes's substantial rights. See U.S.S.G. § 1B1.11, comment. (n.2); United States v. Thomas, 12 F.3d 1350, 1370-71 (5th Cir. 1994). The judgment of the district court is AFFIRMED.

AFFIRMED.